

Number: 201016012

Index Number: 4101.00-00; 9100.00-00

December 18, 2009

Taxpayer is involved in the marketing and sale of taxable fuel. Taxpayer issues credit cards to state and local governments (“states”) and nonprofit educational organizations (“schools”), which then may use the cards when purchasing gasoline and diesel fuel from retail stations owned by companies related to Taxpayer. Taxpayer was registered by the Service under § 4101 of the Internal Revenue Code (the Code) as an Ultimate Vendor (UV) in 1998. This registration allowed Taxpayer to claim a credit or payment on taxed diesel fuel it sold to states at a tax-excluded price. Taxpayer represents that at the time of its original registration, it had functioned as a credit card issuer for many years and that it continued to do so after being registered as a UV in 1998.

Section 11163 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act, of 2005 (Pub. L. 109-59) (SAFETEA) amended § 6416 of the Code to allow, as of January 1, 2006, claims by a person that extended credit on a credit card (credit card issuer) for gasoline sold to a state for its exclusive use or to a school for its exclusive use, if, among other conditions, the credit card issuer was registered under § 4101. Similarly, § 6427 allows claims by a credit card issuer for diesel fuel sold to a state, if, among other conditions, the credit card issuer was registered under § 4101. To implement this amendment, the Service issued Notice 2005-80 on October 22, 2005, 2005-2 C.B. 953, and created a registration activity for credit card issuers ("CC") on Form 637, Application for Registration (For Certain Excise Tax Activities).

After January 1, 2006, Taxpayer applied for registration as a credit card issuer and the Service re-registered Taxpayer as a credit card issuer under section 4101 effective on Date.

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel (gasoline, diesel fuel, and kerosene).

Section 4101 states, in part, that every person required to register under § 4101 with respect to the tax imposed by section 4041(a) or 4081, shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under § 4101 may be used only in accordance with regulations prescribed under this section.

Section 6416(a)(4)(B) provides that a credit card issuer extending credit to a state or school for the purchase of gasoline may make a claim if, among other conditions, the credit card issuer is registered under § 4101.

Section 6427(l)(5)(D) provides that a credit card issuer extending credit to a state for the purchase of diesel fuel may make a claim if, among other conditions, the credit card issuer is registered under § 4101.

Section 48.4101-1(e) of the Manufacturers and Retailers Excise Tax Regulations states that application for registration under § 4101 must be made in accordance with the instructions for Form 637.

Section 48.4101-1(g)(3) provides that if the district director determines that an applicant meets all of the applicable registration tests, the district director must register the applicant under § 4101 and issue the applicant a letter of registration containing the effective date of the registration. The effective date of the registration must be no earlier than the date on which the district director signs the letter of registration. A copy of an application for registration (Form 637) is not a letter of registration.

Sections 301.9100-1 through 301.9100-3 describe the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Generally, requests for relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Service that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-1(b) defines an “election” to include an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under § 6081.

Section 301.9100-1(b) defines a “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 4(d) of Notice 2005-80 provides that application for registration is made on Form 637, in accordance with the instructions for that form and that Form 637 will be revised to include an activity letter for credit card issuers. The Service will register an applicant as a credit card issuer only if the Service (i) determines that the applicant is engaged in business as a credit card issuer and in that business extends credit to states or schools by means of a credit card used for the purchase of taxable fuel; and (ii) is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101-1(b)(5)).

A taxpayer’s submission of an application to be registered by the Service as a credit card issuer under § 4101 is not a “regulatory election” as defined in § 301.9100-1(b) because there is no due date prescribed by the Service in published guidance for the submission of a Form 637 application.

Further, deeming the Taxpayer’s Form 637 application to have been submitted at an earlier date would not provide Taxpayer with relief in respect of tax. Under § 48.4101-1(g)(3), the effective date of the Service’s registration of a taxpayer under § 4101 must be no earlier than the date on which the district director signs the letter of registration. The 9100 regulations do not grant authority to the Service to change the effective date of a taxpayer’s registration under § 4101.

Accordingly, we cannot grant Taxpayer’s request for a ruling under § 301.9100-3 for “retroactive application to January 1, 2006 of the amendment to its regulatory election under IRC § 4101(a) to include the designation as a Credit Card Issuer originally obtained on [Date].”

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This private letter ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, the supporting material is subject to verification or examination.

Sincerely,

Frank Boland
Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: